

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JAMES H. GORBEY, JR., Administrator of the  
Estate of Marissa Rose Fishman, Deceased,  
  
Plaintiff,  
  
vs.  
  
RICHARD LONGWILL, BARBARA  
LONGWILL, AIR BASE CARPET MART, INC.  
d/b/a Air Base Distributing, Inc. d/b/a Air Base  
Carpet Mart, AIR BASE DISTRIBUTING, INC.,  
ASHLAND CONSTRUCTION COMPANY, INC.,  
JOSEPH RIZZO & SONS CONSTRUCTION,  
VINCENT RIZZO CONSTRUCTION CO., INC.  
d/b/a Ashland Construction Co., Inc., JOSEPH V.  
RIZZO, and VINCENT RIZZO,  
  
Defendants.

**PLAINTIFF'S PETITION FOR LEAVE OF COURT TO FILE SUR REPLY TO THE  
REPLY IN SUPPORT OF DEFENDANTS' ASHLAND CONSTRUCTION COMPANY,  
INC., VINCENT RIZZO CONSTRUCTION CO., INC., d/b/a ASHLAND  
CONSTRUCTION CO., INC., JOSEPH RIZZO, AND VINCENT RIZZO, MOTION FOR  
SUMMARY JUDGMENT AS TO LIABILITY**

Plaintiff James H. Gorbey, Jr., as Administrator of the Estate of Marissa Rose Fishman, deceased, by and through his attorneys, Kline and Specter P.C., hereby submit Plaintiff's Petition for Leave of Court to File Sur Reply to the Reply in Support of Defendants' Ashland Construction Company, Inc., Vincent Rizzo Construction Co., Inc., d/b/a Ashland Construction Co., Inc., Joseph Rizzo, and Vincent Rizzo ["Ashland Defendants"], Motion for Summary Judgment as to Liability, and avers as follows:

1. On April 28, 2006, the Ashland Defendants moved for summary judgment as to liability.
2. On May 22, 2006, Plaintiff filed his response in opposition to the Ashland Defendants

motion for summary judgment as to liability.

3. On May 30, 2006, the Ashland Defendants filed a reply brief in support of their motion for summary judgment as to liability.

4. Since May 30, 2006, the parties have taken three (3) additional depositions of New Castle County Police Personnel and Plaintiff has served an expert report specifically on the issue of the Ashland Defendants liability for the death of Marissa Fishman.

5. The aforementioned additional information necessitates a Sur Reply in order to ensure this Court has all relevant information to properly decide the issues presented in Defendants' motion for summary judgment as to liability.

6. Plaintiff respectfully requests Court's approval to file the attached Sur Reply in accordance with District of Delaware Local Rule 7.1.2 (c) which states in pertinent part, "No additional briefs, affidavits, or other papers in support of or in opposition to the motions shall be filed without prior approval of the Court." See District of Delaware Local Rule 7.1.2 (c).

**WHEREFORE**, Plaintiff respectfully requests that this Honorable Court approve Plaintiff's Petition and enter the attached Order granting Plaintiff's Petition for Leave of Court to File Sur Reply to the Reply in Support of Defendants' Ashland Construction Company, Inc., Vincent Rizzo Construction Co., Inc., d/b/a Ashland Construction Co., Inc., Joseph Rizzo, and Vincent Rizzo, Motion for Summary Judgment as to Liability.

Respectfully submitted,

**Wetzel & Associates, P.A.**

BY: /s/ Benjamin C. Wetzel, III  
Benjamin C. Wetzel, III (I.D. No. 985)  
The Carriage House  
1100 North Grant Avenue  
Suite 201  
Wilmington, DE 19805  
(302) 652-1200  
and

**Kline & Specter, P.C.**

BY: /S/ Joshua Van Naarden  
Matthew Casey, Esquire  
Joshua Van Naarden, Esquire  
1525 Locust Street  
19<sup>th</sup> Floor  
Philadelphia PA 19102  
(215) 772-1000  
Attorneys for Plaintiff

Date: June 13, 2006